

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 23, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

GL No. S-3853

Hawaii

Amend Prior Board Action of May 13, 2011, Item D-3, Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Liloe Springs, Kaohe & Kaohe IV, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 09 (por.)

BACKGROUND:

At its meeting of May 13, 2011, Item D-3, the Board of Land and Natural Resources approved the amendment of Water Lease No. S-3853 to allow for the allocation of water from the subject springs between the Department of Land and Natural Resources and the United States to be established by a separate memorandum of agreement (MOA). The MOA would also allocate maintenance costs for the diversion, storage and delivery components of the water system between DLNR and the United States. The MOA could be amended as necessary to meet changing needs, climatic conditions, source output and other factors, with the prior written approval of the Land Board. See Exhibit A attached.

REMARKS:

In further processing the approved amendment to Water Lease No. S-3853, staff learned that there are two separate dispositions for the water system. One is Water Lease No. S-3853 dated August 20, 1964, which was the subject of the May 13, 2011 submittal. The second is Easement No. S-3853a dated August 18, 1964 and recorded in the Bureau of Conveyances in Liber 4821, Page 478. Water Lease No. S-3853 covers the Hopukani, Waihu and Liloe Springs themselves, while Easement No. S-3853a covers the water pipelines and equipment appurtenant thereto that deliver the water from the springs to the Mauna Kea State Recreation Area and the United States' Pohakuloa Training Area.

In light of this information, the amendment to Water Lease No. S-3853 needs to be further revised to reflect that it relates to the allocation of water only; the allocation of maintenance costs for the diversion, storage and delivery components of the water system

are more appropriately the subject of an amendment to Easement No. S-3853a.<sup>1</sup>

The amendment to Water Lease No. S-3853 that the Board approved at the May 13, 2011 meeting was as follows:

5. The allocation of the water from the Lease Area demised hereunder and the parties' respective obligations for construction and maintenance of the diversion, storage and delivery components of the water system shall be established by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Lessor's Board of Land and Natural Resources.

Staff is proposing that the amendment be revised to read as follows:

5. The allocation of the water from the Lease Area demised hereunder shall be established by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Lessor's Board of Land and Natural Resources.

Three other minor amendments are needed to the May 13, 2011 submittal. First, the lease area was given as "60 acres, more or less" on page 1 of the submittal. However, that figure was based on the assumption that the pipeline easement area was included in the water lease. There is no land area provided in Water Lease No. S-3853 for the springs. A very rough estimate of that area is one acre. Accordingly, the submittal should be amended under the AREA heading on page 1 to state "1 acre, more or less". Second, the tax map key parcels identified in the submittal need to be clarified because the springs themselves are located only on TMKs: 3rd/ 4-4-15:01 (por.) and 09 (por.). Third the *ahupua'a* identified in the prior Board submittal need to be redesignated as Kaohe and Kaohe IV.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of May 13, 2011, Item D-3, by
  - A. Redesignating the parcels encumbered by State Water Lease No. S-3853 as TMKs: 3rd/ 4-4-15:01 (por.) & 09 (por.);
  - B. Redesignating the *ahupua'a* where the springs are located as Kaohe and Kaohe IV;

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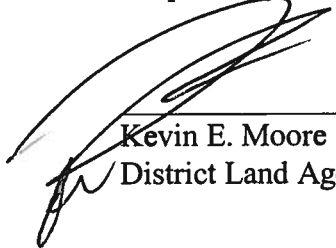
<sup>1</sup> Staff is seeking a corresponding amendment of the Easement by separate submittal before the Board at the present meeting.

- C. Deleting the words "60 acres, more or less" under the AREA heading on page 1 of the submittal and replacing them with "1 acre, more or less".
- D. Amending the proposed language for Paragraph 5 of Water Lease No. S-3853 as it appears on page 3 of the submittal, and at recommendation 2.B on page 5 to read as follows:

5. The allocation of the water from the Lease Area demised hereunder shall be established by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Lessor's Board of Land and Natural Resources.

- 2. All other terms and conditions set forth in its May 13, 2011 approval to remain the same.

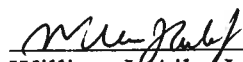
Respectfully Submitted,



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Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson

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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 13, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

GL No. S-3853

Hawaii

Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Liloe Springs, Kaohe IV & V, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 4-4-16:03 (por.)

**APPLICANT:**

United States of America

**LEGAL REFERENCE:**

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands of Kaohe IV and V, situated at Hamakua, Island of Hawaii, identified by Tax Map Key: 3rd/ 4-4-15:01 (por.) & 4-4-16:03 (por.), as shown on the attached map labeled Exhibit 1.

**AREA:**

60 acres, more or less.

**ZONING:**

State Land Use District:	Conservation, Resource Subzone
County of Hawaii CZO:	Unplanned

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

**EXHIBIT A**

May 13, 2011 *DB*

**D-3**

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by State Water Lease No. S-3853 to the United States of America.

CHARACTER OF USE:

As a source of water for the Pohakuloa Training Area.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed amendment of the water allocation set forth in State Water Lease No. S-3853 is a negligible change or expansion of an existing use. See Exhibit 2 attached.

The existence and use of the water system predates the creation and regulation of land uses within the State conservation districts in 1964. The proposed amendment of the water allocation set forth in State Water Lease No. S-3853 does not require the filing of a conservation district use application (CDUA). Applicant will need to consult with the Office of Conservation and Coastal Lands as to whether any future work on the water system will require the filing of a CDUA.

DCCA VERIFICATION:

Not applicable. The United States of America is not required to register with the Department of Commerce and Consumer Affairs.

REMARKS:

Applicant United States of America (Government) and the Board of Land and Natural Resources entered into State Water Lease No. S-3853 (a direct negotiation lease) as of August 20, 1964 covering the Government's use of water from three springs located on the southern flank of Mauna Kea: Hopukani, Waihu and Liloe Springs. The lease provides for a daily allocation of the water from the springs between the State (identified in the lease as Lessor) and the Government as follows:

First 8,000 gallons for the Lessor;  
Next 6,000 gallons to the Government;  
Next 6,000 gallons to be split equally between the Lessor and the Government;  
All water over 20,000 gallons a day to be split between the Lessor and the Government until the Lessor's tanks are filled, at which time all

such water is to go to the Government.

This translates to a 55% share to the State and a 45% share to the Government for the first 20,000 gpd that the springs produce. The lease has a term of 65 years commencing on August 20, 1964 and terminating on August 19, 2029.

The State's share of the water is used for facilities in the Mauna Kea State Recreation Area (MKSRA) managed by the Division of State Parks. The springs themselves, the water diversion facilities, storage facilities, waterlines, and MKSRA facilities are located within the Mauna Kea Forest Reserve under the control and management of the Division of Forestry and Wildlife (DOFAW). The water from the springs is not potable, and is used primarily within the MKSRA for sanitation.

At its meeting of March 11, 2010, agenda Item E-1, the Board approved the request of State Parks for the State to enter into a memorandum of agreement (MOA) with the Government regarding changes in the allocation of water from the springs. A copy of the submittal is attached as Exhibit 3. The Government proposes that its share of the allocation be increased to 65% and the State's share be reduced to 35%. In exchange, the Government will install a new waterline from the water treatment facility at Pohakuloa Training Area to the MKSRA that will provide State Parks and DOFAW with potable water. The economic benefit to the State in agreeing to this proposal was analyzed in the State Parks submittal. See Exhibit 3.

State Parks requested Land Division's involvement because Land Division manages State Water Lease S-3853. The lease requires amendment to change the allocation provision cited above. The amendment needs to allow for flexibility to meet changing needs, climatic conditions, source output and other factors. Accordingly, staff is recommending that Paragraph 5 of the lease be deleted in its entirety and replaced with the following:

5. The allocation of the water from the Lease Area demised hereunder and the parties' respective obligations for construction and maintenance of the diversion, storage and delivery components of the water system shall be established by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Lessor's Board of Land and Natural Resources.

One other amendment to the lease is needed. Paragraph 2 requires the Government to provide rainfall and other data to "Lessor's Division of Water and Land Development," which is the former name of Land Division. Staff is proposing an amendment that will require the Government to provide the information to "Lessor's Division of State Parks and Division of Forestry and Wildlife."

The Government has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments on the request were solicited from the agencies identified below with the results indicated.

Agency	Comments
DLNR-State Parks	No objections.
DLNR-DOFAW	No comments.
DLNR-Conservation and Coastal Lands	No response.
DLNR-Water Commission	No objections.
DLNR-Historic Preservation	No response.
DLNR-Engineering	Project site is located in Flood Zone X of the Flood Insurance Rate Map. No objection to change in allocation of water from the springs.
DOH-Clean Water Branch	No response.
Office of Hawaiian Affairs	See Exhibit 4 attached.
Planning Department, County of Hawaii	No objections.
U.S. Army Corps of Engineers	No response.

The Office of Hawaiian Affairs (OHA) initially had concerns about the lease amendment, but the concerns were allayed after meeting with State Parks personnel in April 2011. See Exhibit 4.

**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed amendment of State Water Lease No. S-3853 as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the amendment will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of State Water Lease No. S-3853 as follows:
  - A. Delete the third subparagraph of Paragraph 2 of the lease and replace it with the following:

AND, ALSO, TOGETHER WITH the nonexclusive right to improve and maintain water collection facilities thereat, subject to condition 19 hereof; and in furtherance of the proper maintenance of said Lease Area the Government hereby agrees to assist the Lessor's Division of State Parks and Division of Forestry and Wildlife in obtaining rainfall, water yields, runoffs, and other similar data;

- B. Delete Paragraph 5 of the lease in its entirety and replace it with the following:

5. The allocation of the water from the Lease Area demised hereunder and the parties' respective obligations for construction and maintenance of the diversion, storage and delivery components of the water system shall be established by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Lessor's Board of Land and Natural Resources.

3. The amendment of the lease shall further be subject to the following:
- A. The standard terms and conditions of the most current amendment of lease document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General; and



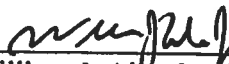
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted



Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aifa, Jr., Chairperson

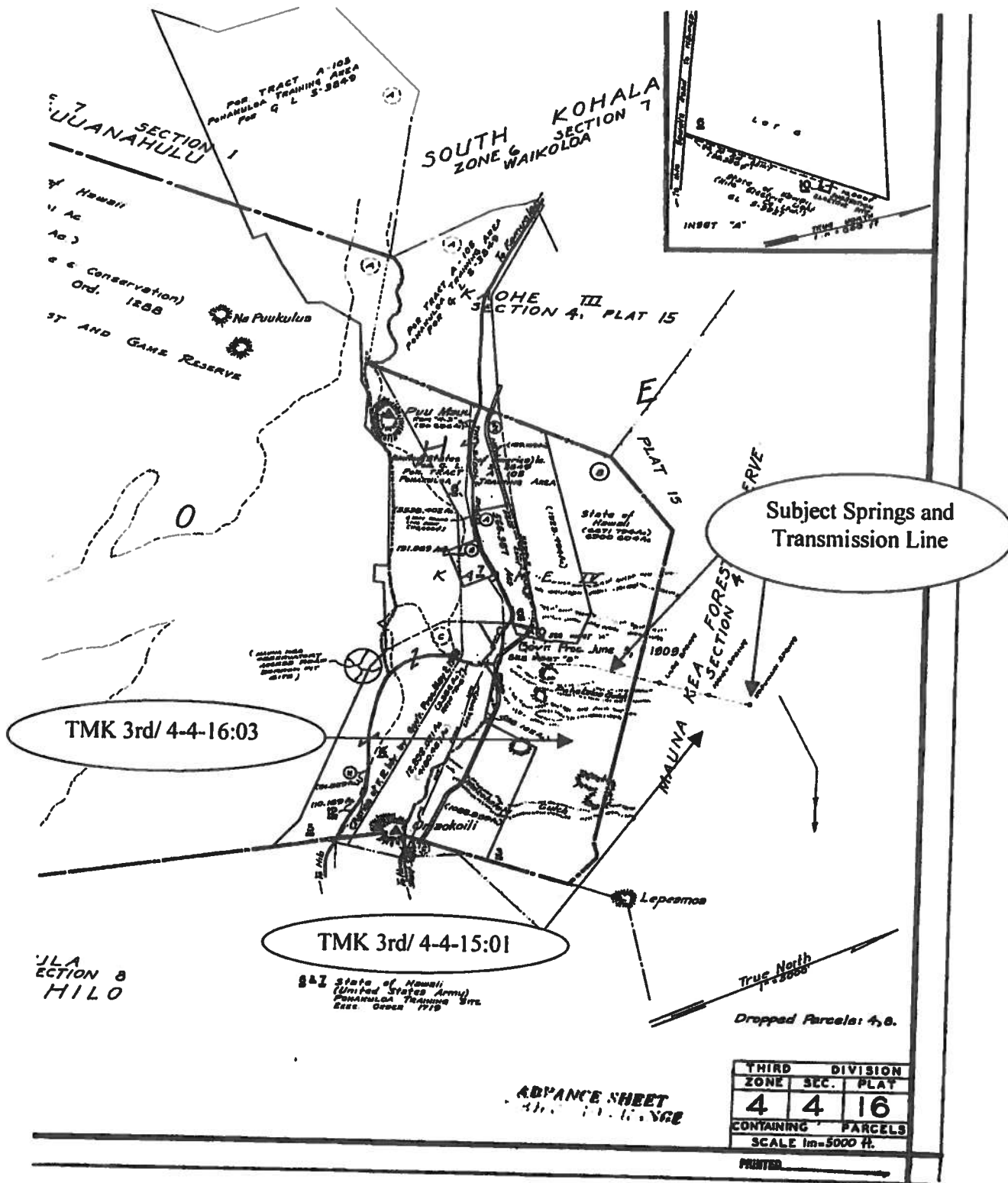


EXHIBIT 1

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AHIA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Liloe Springs

**Project Location:** Kaohe IV & V, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/4-4-15:01 (por.) & 4-4-16:03 (por.)

**Project Description:** Amendment of State Water Lease to change allocation of water usage between State of Hawaii and United States of America

**Consulted Parties:** DLNR Office of Conservation and Coastal Lands; DLNR Division of State Parks; DLNR Division of Forestry and Wildlife

**Exemption Class No.:** In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."

**Exemption Item No. And Description:** Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

**EXHIBIT 2**

This exemption is appropriate because the water system is already in existence under a lease executed in 1964, and the only change contemplated by the subject amendment is a reallocation of the water rights under the lease. The amendment of the lease for the limited purposes of water reallocation will result in no material change or significant cumulative impact. This exemption applies only to the amendment of the water lease and not to any construction activities that may be undertaken to install new or replacement pipelines or other infrastructure. The United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife will need to address the environmental impacts of any such activities separately. If further actions are taken that result in a material change, the United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife will be required to be in compliance with Chapter 343.

**Recommendation:**

The amendment of State Water Lease No. S-3853 to the United States of America in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the amendment is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, the United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife shall be responsible for compliance with Chapter 343, HRS, as amended.

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

5/2/14  
\_\_\_\_\_  
Date

**State of Hawaii**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
Division of State Parks  
Honolulu, Hawaii 96813

**March 11, 2010**

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**SUBJECT: PERMISSION TO ENTER MEMORANDUM OF AGREEMENT  
BETWEEN THE DEPARTMENT OF LAND AND NATURAL  
RESOURCES AND THE DEPARTMENT OF THE ARMY, UNITED  
STATES OF AMERICA FOR WATER SYSTEM AT MAUNA KEA  
STATE RECREATION AREA, HAWAII**

**BACKGROUND**

DLNR and the Department of the Army, United States of America ("Government" or "Army") entered into an agreement of water allocation and usage pursuant to State Water Lease No. S-3853 dated August 20, 1964 ("Water Lease" or "Lease"). The term of the Water Lease was for sixty-five (65) years beginning in August 20, 1964, and ending August 19, 2029. The Water Lease grants the Government with nonexclusive use of water from the Hopukani, Waihu, and Liloe Springs in the Mauna Kea Forest Reserve, Island of Hawaii, Tax Map Key: 4-4-16: 3 (por.) ("Water Source" or "Source") as shown in Exhibit A. The areas in the Mauna Kea Forest Reserve ("MKFR") include the Source, diversion facilities, storage facilities, waterlines, and the facilities of the Mauna Kea State Recreation Area ("MKSRA") managed by the Division of State Parks ("State Parks") and the Division of Forestry and Wildlife ("DOFAW"), and collectively shall comprise the "Property". The Property is owned by DOFAW.

The Water Lease divides the Source waters as follows: based upon a daily yield of 20,000 gallons per day ("gpd"), DLNR receives 55% (11,000 gpd) and the Government receives 45% (9,000 gpd) of this yield; any supply over 20,000 gpd is split evenly.

The Army is proposing to provide DLNR with potable water at no charge and construct all CIP improvements necessary for this transmission including, a new waterline from their Pohakuloa Training Area ("PTA") treatment facility to State Parks and DOFAW facilities at MKSRA, and other related improvements needed. In return, they seek an increase for their allocation from 45% to 65% of the daily yield. If DLNR were to make the improvements it would cost anywhere from \$300,000 (a new waterline from PTA to MKSRA) to over \$1,000,000 (a new water treatment plant and needed improvements) to

**EXHIBIT 3**

establish on-site potable water service for MKSRA; or \$131,144/year to haul potable water for DLNR facilities.

State Parks requested and received DOFAW's permission and concurrence to prepare a Draft MOA for this agreement to implement the Government's proposal and improve the sustainability and management of the Source. PTA has a water treatment facility that has the capability and capacity to provide potable water to State Parks and DOFAW facilities at MKSRA.

The Army estimates expending approximately \$500,000 for this project, which they will need to encumber in March 2010. DLNR staff has been working with staff from the Army's Directorate of Public Works ("DPW") since late July, 2009 on negotiating a new agreement. DPW's fiscal deadline was moved up due to competition for the Government's CIP funds. We are seeking BLNR approval to enter into the MOA, then finalize the agreement through Attorney General review and execution by DLNR.

Refer to Attachment A for the summary of the issues of agreement and impacts of the Draft MOA; Attachment B for a copy of the Draft MOA; and Attachment C for a copy of the Water Lease.

**RECOMMENDATION**

That the Board of Land and Natural Resources authorize the Department to finalize the Draft, and enter into a MOA with the Government, and authorize the Chairperson to sign the MOA subject to approval as to form by the Department of the Attorney General.

Respectfully submitted,



**DAN QUINN**

Division of State Parks Administrator

**APPROVED FOR SUBMITTAL:**



**LAURA THIEL**

Chairperson

Board of Land & Natural Resources

**Attachment A: Summary of the MOA Issues**

**Attachment B: Draft MOA**

**Attachment C: Water Lease**

## SUMMARY

Draft Memorandum of Agreement ("MOA") between the Department of Army, United States of America ("Government" or "Army") and Department of Land and Natural Resources ("DLNR"), Mauna Kea State Recreation Area ("MKSRA") and Mauna Kea Forest Reserve ("MKFR"), Hawaii

This Draft MOA has been reviewed by staff from the Division of State Parks ("State Parks" or "Parks"), the Division of Forestry and Wildlife ("DOFAW"), and Engineering Division ("Engineering"). State Parks and DOFAW collectively are referred to as "DLNR". The Department of the Army, United States of America is referred to as "Army" and/or "Government". The Government and DLNR are referred to as the "Parties".

### The Proposal

The Army is proposing to provide DLNR with potable water, from its water treatment facility at the Pohakuloa Training Area ("PTA"), at no charge and construct all CIP improvements necessary for this transmission including, a new waterline from PTA treatment facilities to DLNR facilities, and other improvements needed for the source waters, storage and combined water system. In return, they seek an increase of the current amount of non-potable water allocated to them from the Hopukani, Waihu, and Liloe Springs ("Source") pursuant to State Water Lease No. S-3853, dated August 20, 1964 ("Water Lease"). The Water Lease divides the Source waters upon the following: based upon a daily yield of 20,000 gallons per day ("gpd"), DLNR receives 55% (11,000 gpd) and the Government receives 45% (9,000 gpd) of this yield; any supply over 20,000 gpd is split evenly. The lease term is for 65 years and expires on August 20, 2029.

The Army seeks to increase its allotment from 45% to 65%, due to increased demand from PTA, such as the Stryker Brigade and additional practice operations. PTA has constructed a water treatment facility and maintained and improved intakes and waterlines from Source and other improvements of DLNR storage tanks storing the Source water, through a contract with Pural Specialty Water Co., Inc. ("Army Operator"). In addition to the operation and maintenance of the PTA water system, the Army Operator is responsible for compliance with Federal and State drinking water regulations for the PTA treatment facility, as it is designated as a public water system. The revised allotments will include both potable and non-potable water, where DLNR's 35% allotment will need to address potable water needs to DLNR cabins and facilities and non-potable water for the comfort station and irrigation.

The Army estimates expending approximately \$500,000 for this project, which they will need to encumber in March 2010. DLNR staff has been working with staff from the Army's Directorate of Public Works ("DPW") since late July, 2009 on negotiating a new agreement. DPW's fiscal deadline was moved up due to competition for the Government's CIP funds. To justify its CIP funding, DPW is seeking confirmation from DLNR that the Department will commit to increase the allocation to PTA.

In addition to the revised allotments, the Draft MOA includes the following measures:

- Improvements to the water system, including Source intakes, storage facilities, transmission water lines and other improvements;
- Improved operation and maintenance of respective water system facilities;
- Flexibility of the parties to establish and modify agreed upon operation, maintenance and sustainable measures to adjust to changes in Source yields, State and Federal policies and fiscal decisions and supply and demand changes;
- Commitments for conservation and sustainability measures including, coordination of the management and maintenance of the Source – clean-out of intakes and repair any failed waterlines; improvement of respective operation and maintenance practices – monitoring leaks and initiate repairs to waterlines or service connections; and, implementing respective water conservation measures – replacement to water efficient fixtures and setting water conservation policies for service personnel at PTA and Park users at MKSRA.

The land encompassing the Source and MKSRA is owned by DOFAW. State Parks and DOFAW staff have reached consensus on the Draft MOA.

#### Rationale of Support for the Draft MOA

The Draft MOA provides the instrument in which DLNR and the Government can address the following issues:

- Changes in the yield of the Source. In the 1960's, the Source was expected to provide 20,000+ gallons/day, even to the extent of 30,000+ gallons/day. Since, global and island drought conditions have reduced this yield to around 8,000 – 15,000 gallons/day. During 1998 through 2004, the cabins at MKSRA were closed due to the lack of sufficient water supplies from prolonged drought conditions. The Army Operators have been monitoring the daily yields and recorded: 15,000 gpd for July/August 2009, 11,000 – 12,000 gpd for September 2009, and 7,000 gpd for October 2009. The Source is no longer expected to produce yields exceeding 20,000 gpd on a consistent basis.
- Revamp of water allocation. The Water Lease required that the first 8,000 gpd go to DLNR, then the next 6,000 gpd goes to the Government, and the remaining 6,000 gpd split evenly to both parties. As Source yields fluctuate and respective water demand increase or change, the current allotment does not provide a practical means to address these unanticipated changes in allocation and demand. The allotment agreement in the Draft MOA provides the parties with a means to modify the allocation upon agreement.
- Monitoring water usage. Currently there are no means to monitor that DLNR and the Government are in compliance with the specified allotments. Basically, the Army is using more water than DLNR as State Parks has reduced its usage by limiting the amount of water used by rental cabins that are available. Currently, we are renting 5 of the 7 housekeeping cabins where non-potable water is supplied for the toilets only, and cabin users are required to bring in their own potable water. The 4 barrack cabins and mess hall have been closed due to the lack of potable water. As cost saving measure, the Park's comfort station is now serviced by non-potable water as discussed below. When water supplied by the Source was abundant, enforcement of allotments were not implemented, but current drought conditions have required monitoring of daily yields and



- usage by the Army Operator. The Draft MOA requires monitoring meters to track water supplied from the Source and respective water allotments.
- Importance of water storage. Due to the fluctuation of daily yields and changing climatic conditions that will result in lower Source yields, storage is a key component for both DLNR and Government. The Water Lease is silent on storage management and responsibilities. The Draft MOA outlines the storage system and specifies respective maintenance responsibilities. The Source storage provides a means for the parties to modify its daily allotment as stored supply can accommodate. For example, DLNR's allotment for a 10,000 gpd overall yield will be 3,500 gpd, this may be suffice for comfort station operation only. If water demand at MKSRA increases from full usage of all cabins, the stored capacity will provide flexibility in the agreement to allow for more water to DLNR. Conversely, if the Army's PTA facilities require more demand due to seasonal maneuvers and practice operations, they can receive more water. The Draft MOA acknowledges that the storage system provides a means to capture water during the high yields and retain sufficient supplies during the drought periods.
  - Improved water system operation and maintenance. The Draft MOA will bring DLNR and the Government together as having a shared water system. The PTA facilities and DLNR facilities are identified as respective public water systems; MKSRA is considered a transient, non-community public water system. The State Department of Health, ("DOH") has not been enforcing safe drinking water standards on DLNR as MKSRA and MKFR facilities currently do not provide potable water. State Parks operated a chlorinator treatment unit for providing potable water in the past, but current safe drinking water standards for surface water systems have imposed stricter treatment standards and requirements that State Parks could not comply with. When potable water service is provided to DLNR, it may be considered a consecutive public water system required to meet DOH's safe drinking water requirements. The Draft MOA acknowledges regulatory compliance and requires respective operators to maintain and operate the respective water system.
  - Sustainability and conservation measures. The Army and DLNR agree that more is needed to ensure the sustainability of the Source through improved monitoring, operation and maintenance of the Source and respective water systems. The Draft MOA specifies respective commitments to ensure that the Source will be managed and conservation measures will be implemented such as water efficient fixtures, water conservation policies and staff implementation.

#### Impacts of the Draft MOA.

If the Draft MOA is approved and executed, impacts will result in the following areas:

#### Economic

Through the terms and conditions of the Draft MOA, DLNR will receive free potable water and the CIP improvements needed for the transmission and related improvements. Engineering estimated the transmission line alone is expected to cost approximately \$300,000, with other storage and transmission improvements the cost of transmission alone may reach the \$400,000 to \$600,000 threshold. If DLNR was to construct its own water treatment facility, this cost may rise up to a \$1,000,000 or more for all improvements needed. With the Draft MOA, DLNR will be saving these amounts for the needed capital improvements. In addition, DLNR will not be

charged for potable water provided by PTA. In the past, when potable water was provided by MKSRA, it had to be hauled in from Hilo at a cost of \$381/5,000 gallons. During FY 2008, State Parks spent \$32,786.00 for 485,000 gallons which amounts to a usage of 1,347 gpd. This water was used to supply the Park's comfort station for State Parks to comply with public health responsibilities. In 2009, State Parks converted the comfort station to non-potable water as hauled potable water for toilet flushing purposes was impractical and cost prohibitive. If we have all 7 housekeeping cabins and 4 barrack cabins and mess hall opened and service to DOFAW cabin facilities this demand and cost will increase almost four-fold.

With this being said, DLNR will have to expend funds to have an operating water system providing potable water. Funding will be needed for our share of facility improvements, such as renovating waterlines from an existing potable water storage tank and any pumping and chlorination improvements needed. Also, the fixtures and waterlines to the rental cabins need to be replaced to ensure efficient water use and management. Currently, State Parks has CIP funds it can expend to address facility improvements and water efficiency measures and retrofits. An added operational cost will be the contracting of a water system operator. The ideal situation will be to utilize the Army Operator as they are knowledgeable of the Source and respective water systems, but DLNR will comply with all procurement regulations in this regard. A means of financing this annual maintenance contract will be through the increased revenues from the MKSRA cabins.

#### Recreational Opportunities

MKSRA's 7 housekeeping cabins (with full kitchens) can accommodate up to 6 persons/cabin or 42 persons/day and its 2 duplex barrack style cabins that can accommodate up to 32 persons/barrack or 64 persons/day. State Parks has opened 5 of the 7 housekeeping cabins for weekend use, but usage have been limited because of the lack of potable water for drinking, cooking, bathing and washing. The barrack cabins and attendant mess hall have also been closed for use because of the lack of potable water. When potable water is provided to these cabins, usage will increase; we understand that Hawaii District receives requests by large groups for the larger accommodations. This would provide additional recreational opportunities for the residents of Hawaii and visitors as many seek more fundamental and simpler venues of recreational accommodations. We like to add that we are planning to improve these cabins through replacement of lighting, appliances, electrical systems through energy appropriations and renovations through TAT R&M funds. In addition, we are planning to design these Park facilities to become energy efficient and even sustainable through the development of solar based energy base to supply the Park's energy needs.

#### Policy Implementation

The improvements to the MKSRA water system was identified on the Department's Recreational Renaissance listing and the State's CIP Strikeforce listing. MKSRA facilities are on the project list for the Administration's energy efficiency projects for State Parks. The Draft MOA will provide a venue for DLNR to implement these policy objectives in a manner that is cost efficient and based upon collaboration and partnership with the Government.

Staff's Recommendation: Approval of the Draft MOA

We believe that the existing Water Lease is outdated, inefficient and inflexible, and should be revised or replaced. We propose taking the Draft MOA, upon your approval, to the Land Board for their consideration. The Draft MOA provides the instrument to update the provisions of the Water Lease such as basing allocations on current yields; flexibility of the Parties to modify allocation upon seasonal or occasional increase in water usage; forming partnerships with the Government and their representatives in the sustainability of the Source, maintenance of storage facilities, and water conservation measures; and have potable water to DLNR facilities at no charge.

**MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF LAND AND  
NATURAL RESOURCES, STATE OF HAWAII AND THE DEPARTMENT OF ARMY,  
UNITED STATES OF AMERICA**

**I. INTRODUCTION**

This Memorandum of Agreement ("Agreement") is entered into by and between the Department of Land and Natural Resources of the State of Hawai'i (the "Department"), by and through the Board of Land and Natural Resources (the "Board"), and the Department of Army of the United States of America ("Government"). The term "DLNR" shall mean the Department, the Board, or both as the context requires. DLNR and Government are collectively referred to as the "Parties".

This Agreement is designed to promote increased cooperation, coordination, and collaboration, and to provide basic principles and guidelines for further negotiations on issues of mutual concern.

DLNR and the Government entered into an agreement of water allocation and usage pursuant to State Water Lease No. S-3853 dated August 20, 1964 ("Water Lease" or "Lease"). The term of the Water Lease was for sixty-five (65) years beginning in August 20, 1964, and ending August 19, 2029. The Water Lease grants the Government with nonexclusive use of water from the Hopukani, Waihu, and Liloe Springs in the Mauna Kea Forest Reserve, Tax Map Key: 4-4-16: 3 (por) ("Water Source" or "Source") as shown in Exhibit A. The areas in the Mauna Kea Forest Reserve ("MKFR") include the Source, diversion facilities, storage facilities, waterlines, the Mauna Kea State Recreation Area ("MKSRA") and the Division of Forestry and Wildlife facilities, and collectively shall comprise the "Property". The Lease specified an allocation of the Source between the Parties based upon a daily yield of 20,000 gallons or more.

The Parties agree that a new agreement is needed to deal with changes that have occurred affecting the Water Source and its usage such as: fluctuations in daily water yields from the Source; changes in respective water demands and needs; adjustment of the Source allocation to meet supply and demand adjustments; DLNR's interest in restoring potable water service to its facilities; capability of the Government to provide potable water service to DLNR; needed water system improvements including water storage and transmission; and implementation of water conservation and sustainability measures including improved monitoring and maintenance of respective water system components. The Parties also agree that the Government's water system serving facilities in the Pohakuloa Training Area ("PTA") and the Department's water system serving DLNR facilities at MKSRA and MKFR will be linked with respective operational and maintenance responsibilities ("Water System").

**As discussed herein, the Parties will be part of the Water System involving facilities at PTA, MKSRA, and MKFR. The Parties acknowledge and agree that the Government's water treatment facilities at PTA have sufficient capacity to accommodate DLNR's current potable water needs listed in Exhibit B. The Parties will commit to the sustainability of the Source; coordinate potable water service; implement water conservation practices; and improve maintenance of respective and shared components to the water system.**

## II. TERMS

Subject to the conditions identified in part III below, the Parties agree as follows:

1. Allocation of the Water Source. The Parties agree that the current yield of water from the Source has decreased since its definition in the Water Lease in 1964. They acknowledge that daily yields fluctuate with seasonal conditions resulting in varying quantities available for both parties. This situation requires a revision to the allocation defined in the Water Lease. Notwithstanding any provision to the contrary, the Parties hereto hereby agree to the following allocation:

a. The Parties will collaborate on establishing a daily yield from the Source in determining monthly estimated yields to allocate as follows:

- 1) The Department will receive 35% of the agreed upon daily yield; and
- 2) The Government will receive 65% of the agreed upon daily yield as specified in Condition No. 4.

b. The allocations shall be comprised of potable and non-potable water quantities to meet respective needs of PTA, MKSRA and MKFR, and the Parties shall coordinate distribution of the water accordingly.

c. The Parties will collaborate on the monitoring and assessment of the Source to establish monthly estimated yields, including, but not limited to, the installation of monitoring, measuring, and other types of equipment as necessary.

d. The Parties shall agree that water for emergency purposes such as fire control will be utilized and not affect the respective allocations, as the Source can accommodate.

e. The Parties shall collaborate on the establishment of a system to record, document, and share information on the daily yields from the Source, monthly allocation estimates; and tracking of allocation compliance.

f. The Parties will allow modification of the aforementioned allocations to adjust for changes in respective potable and non-potable water needs and fluctuations of daily yields from the Source and adequate storage quantities, upon agreement. Refer to Exhibit B for potential allocation scenarios and areas of modification.

2. Storage of Source waters. The Parties agree that water storage is a critical element of the Water System due to fluctuations of water supplied by the Source; and proper storage and monitoring are needed to ensure that respective needs are met for national security and public health and safety.

a. The storage facilities from the Source ("Source storage") will be comprised of the following connected in sequence, A-1 tank (500,000 gallons), S-1 tank (1,000,000 gallons), S-2 tank (500,000 gallons); and the unconnected S-3 tank (25,000 gallons). The following describes functions of the respective aforementioned storage tanks:

- 1) A-1 tank shall serve as the initial collector from the Source connect with S-1; and provide non-potable water for emergency purposes to DLNR and the Government.
  - 2) S-1 tank shall serve as the intermediary storage facility, connect to S-2 and provide non-potable water to DLNR.
  - 3) S-2 tank shall serve as the feeder tank to the Government's PTA water system which will, in turn, provide potable water to both the Government's facility at PTA and to DLNR.
  - 4) S-3 tank shall store potable water from the Government's PTA treatment facility to supply DLNR with potable water.
    - b. The Parties shall agree on respective maintenance responsibilities for the aforementioned tanks and connecting waterlines to respective facilities.
    - c. The Government shall monitor the levels in A-1 tank, S-1 tank and S-2 tank in the establishment of daily estimated yields.
    - d. The Parties shall agree on the installation and location of the following meters to track and monitor yields from the Source and allocation to the Parties:
      - 1) M1 shall monitor the quantity of water from the Source.
      - 2) M2 shall monitor water supplied from S-2 to the Government's PTA water treatment facility.
      - 3) M3 shall monitor potable water supplied from the Government's PTA water treatment facility to S-3.
      - 4) M4 shall monitor non-potable water supplied for DLNR's non-potable water demand.
      - 5) Other meters shall be installed upon agreement with the Parties for allocation monitoring and Source sustainability.
    - e. The Parties shall agree that water levels in A-1 shall be maintained to capacity and will not drawdown unless emergency conditions warrant such depletion.
    - f. The Parties shall establish water levels for S-1 and S-2 storage tanks to ensure adequate supply for the Water System.
    - g. DLNR shall monitor and maintain S-3 tank.
3. Water transmission and improvements. The Parties agree that improvements in the connecting waterlines for Source storage facilities and waterlines transmitting non-potable and potable water to PTA and MKSRA and MKFR are needed.
- a. The Parties will coordinate on improvements needed for the Source and connecting waterlines of the Source storage facilities, including, but not limited to, the installation of monitoring devices, water meters, system bypass waterline(s), non-potable and emergency outflow waterlines, and other related improvements.
  - b. The Government shall make the following improvements: the outflow waterline from S-2 to PTA; and the emergency outflow line from A-1 to PTA.
  - c. DLNR shall make the following improvements: the emergency outflow waterline from A-1 to MKSRA and MKFR; the non-potable waterline from S-1 to MKSRA and MKFR; and the potable waterline from S-3 to MKSRA and MKFR.

d. The Government shall make all improvements from its PTA water treatment facility to DLNR's S-3 tank and coordinate these improvements, including but not limited to, potable water service, transmission line(s), connection improvements, and other related improvements.

e. The Parties will allow modification to the respective improvements above upon agreement.

4. Water system operation and maintenance. The Parties agree that Federal and State drinking water regulations will require certified water system operators to operate the Water System and properly maintain Source storage facilities. The PTA facility is designated as a public water system and with the improvements described in this agreement, DLNR facilities will be considered a consecutive public water system. As the Government and DLNR do not have respective qualified staff in this regard, a qualified third party is needed to comply with these regulations and standards. The Government has obtained an operator for their PTA facilities ("PTA Operator"). Subsequently, DLNR will need to obtain an operator when it is deemed a consecutive public water system ("DLNR Operator").

a. The Parties shall coordinate the operation and maintenance of the Water System through the respective operators mentioned above.

b. The Parties shall designate respective responsibilities for the Water System.

1) DLNR shall be responsible for operation and maintenance of S-3 tank, connecting pipelines, water pumps and treatment system serving DLNR's facilities at MKSRA and MKFR.

2) The Government shall be responsible for operation and maintenance of all facilities serving PTA, and for its water treatment facilities at PTA.

3) The Government shall coordinate with DLNR on the maintenance of the Source including repairs and improvements to diversions at the Source and inflow waterlines.

4) The Parties shall coordinate the maintenance of the Source storage facilities.

5) The Government shall be responsible for any contamination of potable water from S-2 tank to the PTA treatment facility to DLNR's S-3 tank, and comply with all required corrective measures.

6) DLNR shall be responsible for any contamination of potable water from S-3 to its facilities at MKSRA and MKFR and comply with all corrective measures.

7) The Parties shall coordinate to correct any contamination of water from the Source affecting water quality entering A-1, and contamination in S-1 and S-2 prior to transmission to the Government's PTA facility.

c. The Parties will allow modification to the respective maintenance responsibilities stated above upon agreement.

5. Source and Water System sustainability and conservation. The Parties agree that the water yield from the Source fluctuates and is susceptible to uncontrollable environmental and climatic conditions. To address the erratic supply to meet DLNR and Government needs, the Parties will commit to measures to ensure the sustainability of the yields from the Source.



a. The PTA and DLNR Operators shall coordinate on the maintenance and operation of the intakes and inflow waterlines from the Source and Source storage facilities.

b. The Parties shall collaborate on ensuring that proper operation and maintenance of the Water System and at respective facilities are implemented to avoid system failures and wastage of water.

c. The Parties shall implement respective water conservation measures at PTA, MKSRA and MKFR to include but not limited to: installation of water efficient fixtures; waterline and plumbing repairs at respective facilities; advisories and information to users of respective facilities; and other measures implemented by PTA and DLNR Operators.

6. Uses in the Property. The Parties shall agree to the following uses in the Property, as subject to state law applicable to forest reserves, to any other applicable state law, and to future revision by the Parties:

a. Ingress, egress, regress for Operators, representatives and staff of PTA and DLNR on the Property at any time in the performance of their duties for the operation and maintenance of the Source, Source storage and Water System shall be allowed.

b. Access to all Source, Source storage and Water System facilities on the Property shall be provided to the Parties at any time in the performance of their duties stated above.

c. The use of water from the Source by the Parties as specified in this Agreement.

d. Grading and hazard mitigation by DLNR and or authorized persons shall be allowed provided that these activities do not interfere and/or unreasonably impact the operation and maintenance of the Source, Source storage and Water System.

e. The construction of improvements in the Property as described above including but not limited to unforeseen improvement projects and emergency projects as agreed upon by the Parties.

f. The Parties shall agree to preserve and manage plant and wildlife and their habitats in the operation, maintenance and improvements to the Water System, and coordinate on appropriate mitigation measures as necessary.

7. Implementation of the terms in the Agreement. The Parties agree to implement the terms stated above.

a. If any of the terms identified above are deemed unachievable, infeasible, impractical, or not viable for any reason, the Parties agree in good faith to cooperate and work together to find alternate feasible and acceptable terms that will facilitate the intended goals.

b. The Parties agree in good faith to cooperate with each other to accomplish the intended goals identified above. Cooperation includes, but is not limited to, providing copies or access to documents referenced in this Agreement, providing copies of or access to other relevant documents, and providing information in appropriate media that may facilitate the intended operation and maintenance of the Water System and Source.

### III. Conditions

1. **Governing Law.** This Agreement shall be governed by the laws of the State of Hawai'i.
2. **Amendments.** This Agreement may be amended only by the written agreement of the Parties hereto.
3. **The Term of the Agreement.** The Agreement will be in effect for a period of twenty (20) years from the date of its execution.
4. **Provision of Potable Water.** Upon the allocation terms defined in II.1, the Government shall provide potable water to DLNR at no cost if the Water Source is the only source used in the Water System. When other water sources are developed and incorporated into the Water System by the Government to provide DLNR with potable water, then, this agreement will be amended to allow the Government to assess a fee that is reasonable and agreed upon by the Parties.
5. **Improvements to the Water System.** In exchange for the allocation terms defined in II.1., the Government shall implement all necessary improvements in this regard and shall be able to erect signage and install other items necessary for the construction of these improvements.
6. **Operation and Maintenance of the Water System.** The Parties shall be responsible for respective operation and maintenance activities as defined in II.4., including coordination and cooperation on overlapping duties.
7. **Sustainability of the Source and Water Conservation.** The Parties shall commit to the sustainability of the Source and implement water conservation and efficiency measures as described in II.5.
8. **Resource Protection in the Property.** The Government shall not make, suffer or permit any waste, nuisance, or unlawful, improper or offensive use of the areas in the Property used for the Water System, or any part thereof, nor, without the prior written consent of DLNR, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now or hereafter growing on said areas, except as may be necessary to keep said lands clear and in proper condition for the utilization of the premises for the uses herein permitted, and except as may be necessary to prevent interference by such trees with any building, road, waterline, power or communication line or boundary fence or barrier.
9. **Coordination of Improvements.** The Government shall coordinate with DLNR on any improvements, alterations, modifications, and repairs to facilities in the Water System other than emergency repairs, and may require DLNR and/or BLNR approvals as warranted.
10. **Indemnity and Defense by the Government.** The Government shall agree in behalf of its employees, service personnel, representatives, contractors, assigns, and person or entity acting for, under, or through them, to indemnify, defend, and hold harmless DLNR, its officials, employees, representatives, and agents, against any claim or liability, including all loss, damages, costs, expenses, attorney's fees, and penalties, for any damage to real or personal

property, including environmental damage, or injury to or death of persons, or violation of or noncompliance with applicable law, when such penalties, damage, injury, or death results from, arises out of, or is connected with planning, design, and construction of aforementioned improvements described in II. at MKSRA and MKFR by the Government under this MOA, its amendments, or successor document(s).

11. Termination of the Water Lease. This Agreement shall supersede the Water Lease in effect upon execution by both Parties. The Parties shall coordinate on terminating the Lease as required by its terms, covenants, conditions and agreements.

12. Binding Effect. Upon execution of this Agreement by both Parties, the Parties shall cooperate and negotiate in good faith conditions and terms to complete and execute the definitive documents and instruments necessary to accomplish the intended goals. Terms and conditions of any future agreement shall be consistent with this Agreement and upon such other terms as the Parties shall agree.

DRAFT

Item E-1  
Attachment B

The foregoing accurately reflects the Agreement between the Parties. We indicate our acceptance of this document and the agreement herein by executing this Agreement.

DEPARTMENT AND BOARD OF LAND AND NATURAL RESOURCES

Date \_\_\_\_\_

By \_\_\_\_\_  
LAURA H. THIELEN  
Its Chairperson

THE UNITED STATES OF AMERICA

Date \_\_\_\_\_

By \_\_\_\_\_  
[Person's name]  
[Title]

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of General Counsel

Date \_\_\_\_\_

A detailed topographic map of the Pohakuloa Training Area. The map features numerous contour lines indicating elevation. Key locations labeled include 'auha' in the upper left, 'Hopikani Springs', 'Waihu Springs', and 'Pohakuloa Camp' in the lower center. A road is shown running horizontally across the lower portion of the map, with a section labeled 'HAKULOA TRAINING AREA'. A small rectangular area is marked with '19720'. A scale bar at the bottom right indicates a distance of 20 units. The map is oriented with North at the top.

The diagram illustrates the water supply system for the PTA and DLNR. It features several tanks and monitoring meters:

- Source:** The origin of the water supply.
- 1. A-1 collector tank filled from Source:** Receives water from the Source via meter M1.
- 2. A-1 bypass to S-1:** A direct line from the collector tank to the S-1 tank.
- 3. S-1 Intermediary tank:** Receives water from the collector tank and the bypass line.
- 4. S-2 feeder tank to PTA for treatment:** Receives water from the S-1 tank via meter M2.
- 5. Intake and treatment and transmission (PTA):** The PTA facility.
- 6. Potable water from PTA to S-3 DLNR tank:** Water is sent from the PTA to the S-3 tank via meter M3.
- 7. DLNR non-potable use:** Water is sent from the S-1 tank to the DLNR facility via meter M4.
- 8. Non-potable water emergency use only to DLNR and PTA:** Water is sent from the collector tank to the DLNR facility.
- DLNR: MKSRA/MKFR:** The DLNR facility.
- Monitoring Meters:**
  - M1 - Source yield
  - M2 - PTA allocation
  - M3 - DLNR potable water allocation
  - M4 - DLNR non-potable water allocation

EXHIBIT B

Department/Division	Facility	Source yield: 30,000 gpd	Source yield: 20,000 gpd	Source yield: 10,000 gpd	Source yield: 10,000 gpd	Source yield: 3,500 gpd
Source yield estimates are based upon daily demand without any storage supplies to accommodate demand. These estimates demonstrate how the allotment can be utilized and do not reflect actual usage and decisions. DLNR will decide as to how to comply with the daily allotment.		Daily potable estimates	Daily potable estimates	Daily Non-potable estimates	Daily potable estimates	Daily Non-potable estimates
DLNR/State Parks	Cabin No. 1	300	300			
	Cabin No. 2	300	300			
	Cabin No. 3	300	300			
	Cabin No. 4	300	300			
	Cabin No. 5	300	300			
	Cabin No. 6	300	300			
	Cabin No. 7	300	300			
	Group Cabin No. 1	800	0			
	Group Cabin No. 2	800	0			
	Dining Hall	350	0			
	Caretaker's cottage and Park HQ	200	200			
	Comfort Station			3750	3750	3400
DLNR/DOFAW	Irrigation			1420	130	0
	Cabin No. 1	260	260			
	Cabin No. 2	260	260			
	Cabin No. 3	260	0			
	Irrigation/fire response			1560	1560	1560
DOT HWYS				300	300	0
TOTAL		5030	2820	5470	4180	3400

EXHIBIT B

Item E-1  
Attachment B

		10500	7000	3500
<p>1. The allotment of all daily yield will be DLNR 35% and PTA 65% including high and low yield periods, or pursuant to agreement between the Parties.</p> <p>2. Any capture yield amount over the agreed upon monthly allotment split evenly between DLNR and PTA, or pursuant to agreement between the Parties.</p> <p>3. DOFA W's fire response will not be part of the daily allocation.</p> <p>4. The Parties can revise the 35/65 allotment upon agreement.</p>				

64 - 32549

RECORDATION REQUESTED BY:  
U. S. Army Engineer Div, POD  
Ph. 542867

STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECEIVED FOR RECORD

LIBER 4855 Pages 264 thru 276

AFTER RECORDATION, RETURN TO:

'64 OCT 5 AM 10:53  
/s/ M. Adachi

RETURN BY: MAIL ( ) PICKUP (X)

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SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE WATER LEASE NO. S-3853  
U. S. LEASE, CONTRACT NO. DA-94-626-ENG-81

1. THIS LEASE, made and entered into this 20<sup>th</sup> day of August, in the year one thousand nine hundred and sixty-four by and between the STATE OF HAWAII, represented by its Board of Land and Natural Resources, whose address is P. O. Box 621, Honolulu, Hawaii 96809, and whose interest in the property hereinafter described is that of fee simple owner, for itself, its administrators, successors, and assigns, hereinafter called the "Lessor," and THE UNITED STATES OF AMERICA, hereinafter called the "Government":

WITNESSETH: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby grants to the Government the nonexclusive use of the Hopukani, Waihu and Liloa Springs, hereinafter referred to as the "Lease Area," as shown on Exhibit "A," attached hereto and hereby made a part hereof;

POHAKULOA WATER LEASE



TOGETHER WITH the right to pass and repass over the Lease Area, but in a manner such as will interfere as little as practicable with the full use of such area by present and future permittees, lessees and licensees of the Lessor;

AND, ALSO, TOGETHER WITH the nonexclusive right to improve and maintain the water collection facilities thereat, subject to condition 19 hereof; and in furtherance of the proper maintenance of said Lease Area the Government hereby agrees to assist the Lessor's Division of Water and Land Development in obtaining rainfall, water yields, runoffs, and other similar data;

FOR the following purpose: As a source of water for the Pohakuloa Training Area.

3. TO HAVE AND TO HOLD the said premises for a term of sixty-five (65) years beginning 21 August 1964, and ending 20 August, 2029; subject, however, to the rights of the Lessor and the Government respectively to terminate this lease in accordance with provisions 21, 26 and 34 hereof.

4. The Government shall pay the Lessor rent at the following rate: ONE DOLLAR (\$1.00) for the term of the lease, the receipt and sufficiency whereof is acknowledged.

5. Notwithstanding any provision to the contrary, the parties hereto hereby agree to be bound at all times to the following daily allocation of water from the Lease Area demised hereunder:

First 8,000 gallons for the Lessor;  
Next 6,000 gallons to the Government;  
Next 6,000 gallons to be split equally  
between the Lessor and the Government;

All water over 20,000 gallons a day to be  
split between the Lessor and the Government  
until the Lessor's tanks are filled, at which  
time all such water is to go to the Government.

RESERVING TO THE LESSOR, HOWEVER, THE FOLLOWING:

6. The right of ingress, egress and regress  
for its agents and representatives on the Lease Area at  
any time in the performance of their duties and for  
inspection of any system or systems used in the develop-  
ment or diversion of water.

7. The right to use all facilities now or  
hereafter installed or placed on the Lease Area for  
measuring and recording flow of water, even if owned or  
operated by the Government, together with the right to  
install, operate and maintain, at its own cost and  
expense, such further and other facilities as it may  
deem necessary for such purposes.

8. The right to the water flowing from the Lease  
Area, as provided in provision 5 hereof.

9. All minerals, as hereinafter defined, in,  
on or under the Lease Area and the right, on its own  
behalf or through persons authorized by it, to prospect  
for, mine and remove such minerals and to occupy and use,  
for such purposes, so much of the surface of the ground  
as shall not unreasonably interfere with the operations  
of the Government hereunder.

"Minerals" as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land.

10. So much of the rocks, soil or gravel in or on the Lease Area as the Lessor may require for any and all purposes.

THE TERMS, COVENANTS, CONDITIONS AND AGREEMENTS UNDER WHICH THIS LEASE IS HEREBY GIVEN ARE AS FOLLOWS:

11. The Government may install measuring devices approved by the Lessor at all source development facilities to measure the water developed under this lease. The Lessor may read the measuring devices. The Lessor and the Government agree to furnish each other with all data obtained from all water development facilities, devices and instruments constructed or installed to measure rainfall and flow of water within the area of this lease. Both the Lessor and the Government will allow each other the privilege of checking all such water measuring facilities, devices and instruments, as well as inspecting the operation and maintenance of these facilities.

12. The Lessor or its agents and employees shall have the right to examine the books and contracts of the Government so as to determine the accuracy of the

records furnished by it, and the Government will also permit or suffer the Lessor or its agents and employees to make copies of or extracts from the same books and contracts.

13. The Government shall keep at all times in good repair all Government improvements now on or hereafter to be constructed on the Lease Area at the Government's own cost and expense.

14. The failure of the Lessor to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

15. The Government shall observe and comply with all rules, regulations, ordinances and laws made by any municipal or State governmental authority applicable to the Lease Area and not in conflict with the terms of this lease.

16. The Government will take such action as may reasonably be required to safeguard and conserve all water resources on the Lease Area.

17. The Government shall not make, suffer or permit any waste, nuisance, strip or unlawful, improper or offensive use of the Lease Area, or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now or hereafter growing on said area, except as may be necessary to keep said lands clear and in proper condition for the utilization

of the premises for the uses herein permitted, and except as may be necessary to prevent interference by such trees with any building, road, pipeline, power or communication line or boundary fence.

18. The Lessor shall have the right to erect signs and construct capital improvements within the Lease Area at locations mutually agreed upon by the parties hereto, in connection with water conservation, public water consumption, forestry and related purposes, said capital improvements including but not limited in any way to the construction, maintenance and/or improvements of roads and trails; provided, however, that notwithstanding any other provisions of this lease to the contrary, the Government hereby accepts the responsibility and liability for repairs of any damage which can be demonstrated to have been the direct result of military activities, to improvements constructed by the Lessor.

19. The Government shall obtain the prior written approval of the Chairman of the Board of Land and Natural Resources, or his successor or successors in office, before making any improvements, alterations or repairs to the facilities in said Lease Area other than emergency repairs required to prevent a substantial loss of water.

20. The Government shall not transfer or assign any right, privilege or authority herein given or in any manner transfer or assign this lease for the whole or any part of the term hereof.

21. The Government may terminate this lease at any time by giving thirty (30) days' notice in writing to the Lessor.

22. The Government will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Lessor or its permittees in connection with their use of the premises described herein.

23. The Government hereby agrees that its use and enjoyment of the land herein demised shall not be in support of any policy which discriminates against anyone based upon race, creed or color.

24. Subject to obtaining the prior approval of the Government, the Lessor reserves the right to grant rights or privileges to others not inconsistent with the terms of this lease affecting the whole or any portion of the Lease Area.

25. The Lessor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Government in connection with the Government's use of the premises described herein.

26. In the event that the Lease Area is not used by the Government for a period of three (3) consecutive years, this lease may be terminated upon thirty (30) days' written notice from the Lessor to the Government,

provided, however, that if prior to the expiration of the aforesaid 30-day period the Secretary of the Army shall find and determine that the Lease Area is required for military purposes and shall notify the Lessor in writing of this finding and determination, this lease will continue in effect; provided, further, that periods during which a national emergency has been declared by the President or the Congress of the United States and periods during which major combat elements are temporarily deployed away from the State of Hawaii shall not be included in the said three-year period. During such period of temporary deployment the parties hereto shall discuss and give consideration to and provide for an additional allocation of water to the Lessor compatible with then existing military training requirements. The Government will assure that current military standards concerning adequate utilization are applied to these premises and will assure that such use is known and is a matter of record and available to the Lessor upon request.

27. Any notice under the terms of this lease shall be in writing signed by a duly authorized representative of the party giving such notice, and if given by the Government shall be addressed to the Lessor at P. O. Box 621, Honolulu, Hawaii 96809, and if given by the Lessor shall be addressed to the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Building 96, Fort Armstrong, Honolulu, Hawaii 96813, Attention: Real Estate Division.

28. The Government's compliance with all obligations placed on it by this lease shall be subject to the availability of funds.

29. The Lessor's compliance with any obligations it may incur under this lease shall be subject to the availability of funds.

30. The Government shall surrender possession of the premises upon the expiration or sooner termination of this lease and, if required by the Lessor, shall within sixty (60) days thereafter, or within such additional time as may be mutually agreed upon, remove its signs and other structures; provided that in lieu of removal of structures the Government may abandon them in place.

31. (a) That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Division Engineer, U. S. Army Engineer Division, Pacific Ocean, Honolulu, Hawaii, hereinafter referred to as said officer, who shall within a reasonable time reduce his decision and the reasons therefor to writing and mail or otherwise furnish a copy thereof to the Lessor. The decision of the said officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessor mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless



determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

(b) This condition does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) That all appeals under this provision shall be processed expeditiously.

32. The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this lease without liability or in its discretion to deduct from the lease price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

33. No member of or delegate to Congress or resident commissioner shall be admitted to any share

or part of this lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

34. (a) The Government may, by written notice to the Lessor, terminate the right of the Lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Lessor, or any agent or representative of the Lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Lessor as it could pursue in the event of a breach of the lease by the Lessor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not

less than three nor more than ten times the costs incurred by the Lessor in providing any such gratuities to any such officer or employee.

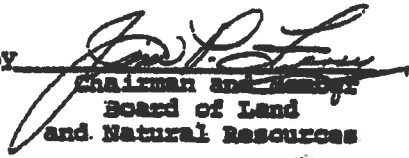
(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.

35. This lease is not subject to Title 10, United States Code, Section 2662.


IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

STATE OF HAWAII

By

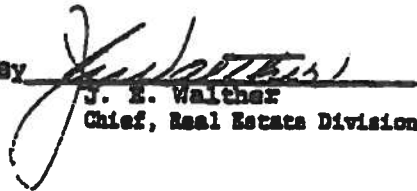
  
Chairman and Member  
Board of Land  
and Natural Resources

And By


  
Member  
Board of Land  
and Natural Resources


THE UNITED STATES OF AMERICA

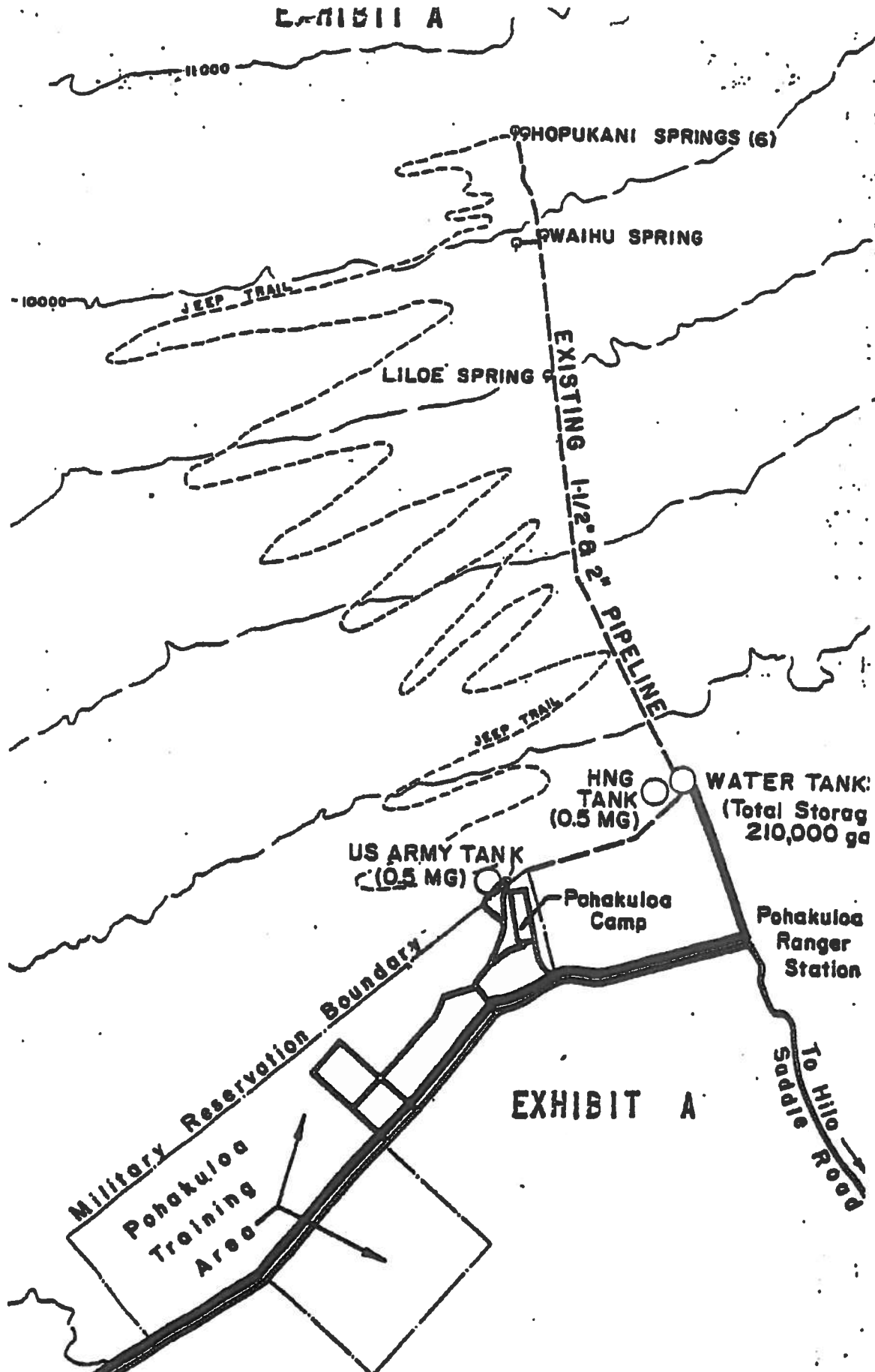
By

  
J. E. Walther  
Chief, Real Estate Division

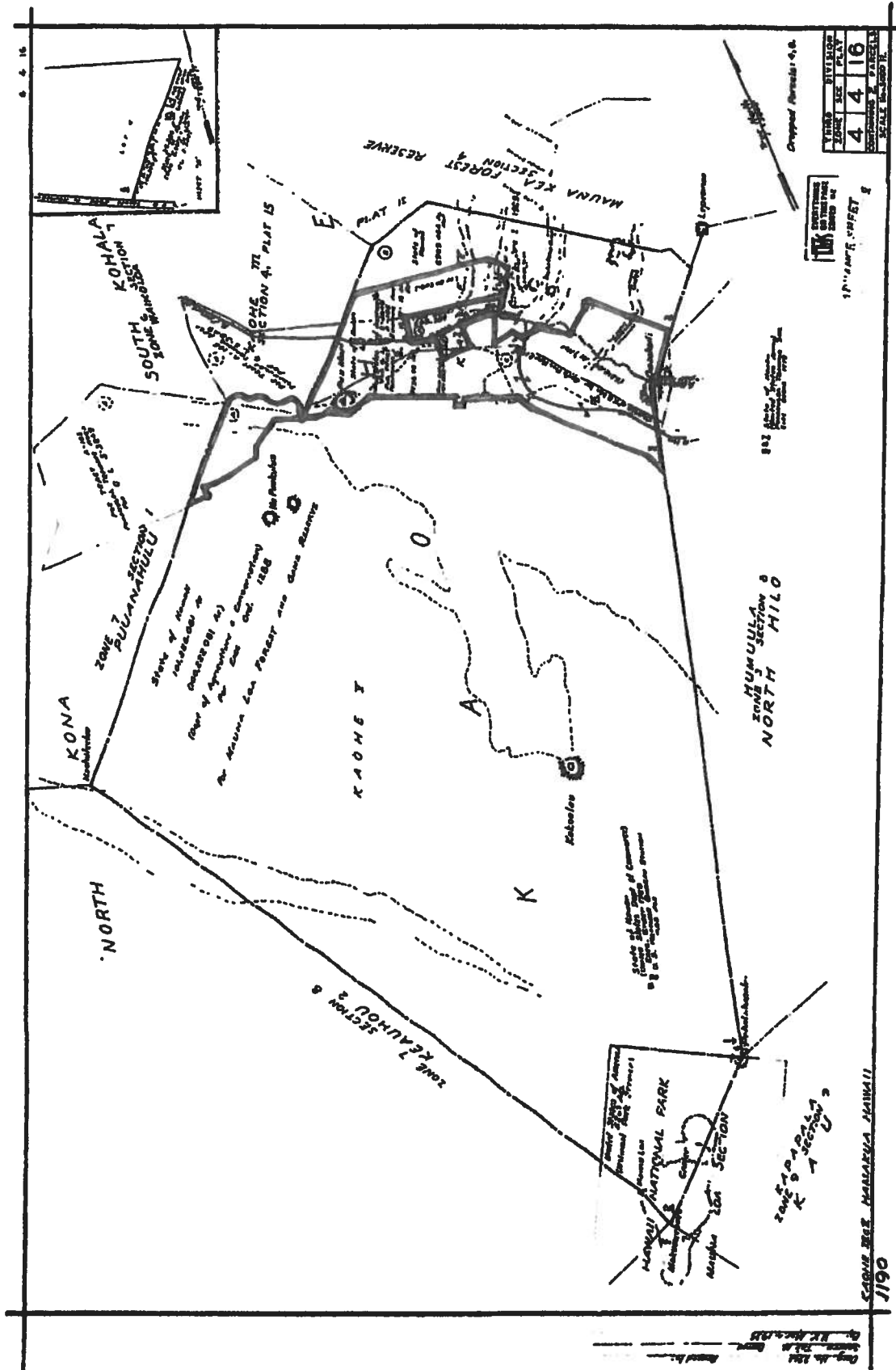
APPROVED AS TO FORM:

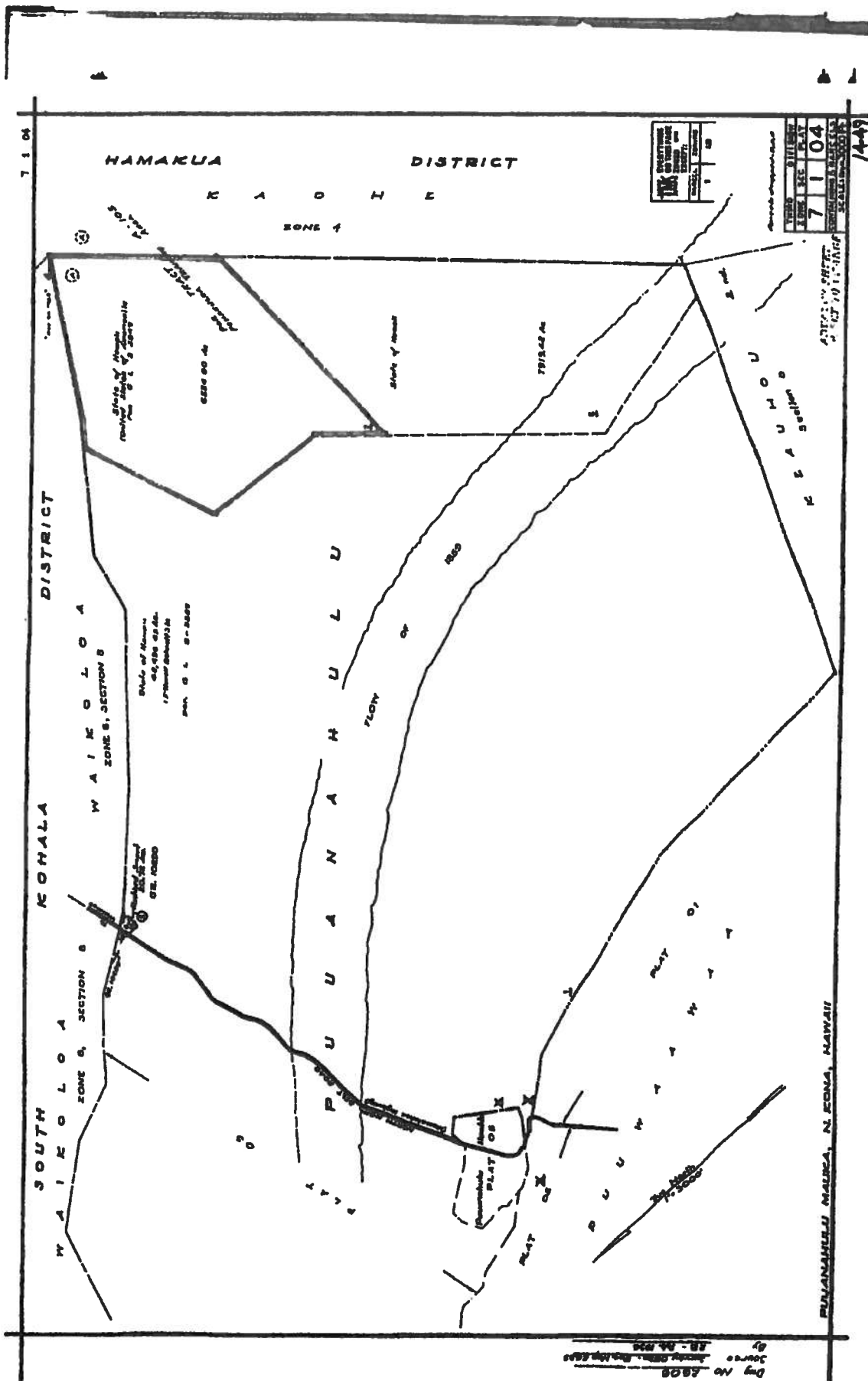
  
BERT T. KŌKAVASI  
Attorney General  
State of Hawaii

  
PETER C. LEWIS  
Deputy Attorney General  
State of Hawaii











**STATE OF HAWAII  
OFFICE OF HAWAIIAN AFFAIRS  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813**

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HILO, HAWAII

HRD11/5578

April 18, 2011

Kevin Moore, District Land Agent  
Department of Land and Natural Resources, Land Division  
75 Aupuni Street, Room 204  
Hilo, Hawai'i 96720

**Re: Comments on Amendment of State Water Lease No. S-3853 to the United States of America for the Hopukani, Waihu and Liloe Springs, Hāmākua, Hawai'i**

Aloha e Mr. Moore:

The Office of Hawaiian Affairs (OHA) is in receipt of your February 28, 2011 request for comments on the above-referenced agency action. We thank you for granting an OHA extension on the comment period and for the opportunity to provide input into the decision-making process.

OHA understands that the proposed action will involve an existing water lease, No. S-3853 (the "Lease"), entered into between the Board of Land and Natural Resources (BLNR) and the United States of America (USA) on August 20, 1964. The Lease covers non-potable water originating from Hopukani, Waihu, and Liloe springs, which are all located on the southern flank of Mauna Kea. At these three sites, water seeping from cracks in the rock are collected and gravity-fed through pipes down to a series of storage tanks mauka of the Mauna Kea State Recreation Area (MKSRA). Currently, the MKSRA facilities use the non-potable water for toilets at the comfort station and open cabins, irrigation, and fire control. The water not used or stored at MKSRA is sent for use by the United States of America at the Pōhakuloa Training Area (PTA).

The primary effect of the proposed action will be to amend the Lease to allocate water and define the responsibilities of the BLNR and USA according to the terms of a separate memorandum of agreement (MOA). BLNR approved entering into the MOA at its March 11, 2010 meeting. The MOA reallocates water according to percentage of the total yield derived

**EXHIBIT 4**

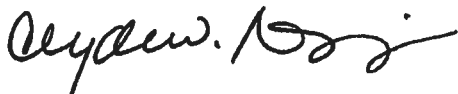


from the three springs and grants the USA a greater share of the non-potable spring water. In exchange, MKSRA will receive free potable water processed at the PTA water treatment plant. The MOA also addresses water system operation and conservation of the water used at MKSRA and PTA.

Initially, OHA staff did have concerns after review of the submitted documentation of the proposed BLNR action, but these concerns were largely allayed as a result of a meeting held on April 20, 2011 with staff from Department of Land and Natural Resources, Division of State Parks. It is anticipated that the proposed lease amendment will be exempted from the preparation of an environmental assessment, pursuant to Exemption Class 1: "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Haw. Admin. R. § 11-200-8(a)(1). As was clarified at the staff meeting, the MOA allocation would not increase the yield of non-potable water from the springs and only affect the terms of water allocation, with the additional benefit of potable water being provided to MKSRA free of charge. We extend our appreciation to State Parks staff for taking the time to provide clarifications on the proposed action and for listening to our staffs' concerns.

Thank you once again for the opportunity to comment. Should you or your staff have any questions, please contact Everett Ohta at 594-0231 or by email at [everetto@oha.org](mailto:everetto@oha.org).

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o  
Chief Executive Officer

C: OHA Trustee Robert K. Lindsey, Jr.  
OHA East and West Hawai'i Community Resources Coordinators  
Russell Kumabe, DLNR State Parks – *via facsimile transmission*